

Section 7.1

Enforcement Actions and Fines for Violating FAC §§11791 and 11792

Questions posed at the Roundtable

This document provides guidance on the following questions posed at the Hearing Officer Roundtable:

- What is the most appropriate enforcement action for violations of Food and Agricultural Code (FAC) sections 11791 and 11792, especially for false, misleading, or fraudulent activities?
 - When levying administrative civil penalties for violations of FAC section 11792, what is the most appropriate fine classification?
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Improved compliance is the primary goal of the pesticide enforcement program

The primary goal of the pesticide enforcement program is industry compliance with state and local pesticide use requirements. This goal is achieved through the use of a wide variety of regulatory enforcement tools. Depending on the specific circumstances or consequences of the violation, our enforcement response can be designed to:

- Change violators' behavior through a program of progressive discipline.
Examples: repeat inspections, office interviews, administrative civil penalties, and license, certificate, registration, or permit suspensions.
 - Prevent or mitigate harm by stopping current and/or future actions.
Examples: cease and desist orders, abatement orders, seize / hold actions, prohibit harvest orders, license, permit, or certificate suspensions / revocations.
 - Punish egregious behavior or consequences by depriving the violator of freedom or property.
Examples: criminal prosecution resulting in fines and/or imprisonment, civil prosecutions of up to \$10,000 per violation, or permanent revocation of a state or county issued license, certificate, registration, or permit.
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**Which
enforcement
response is
most
appropriate?**

The most appropriate enforcement response to a violation of FAC section 11791 or 11792 is the action that best fits the circumstances of the violation and will likely result in the desired outcome.

The best response to an “unlawful act” depends on many factors, including:

- The specific circumstances of the violation
- The actual or potential effect(s) of the violation on people, the environment, or property
- The violator’s history
- The violator’s status (licensee, permittee, or certificate holder)
- The quality of evidence collected by or available to the investigator **AND**
- The desired outcome:
 - ✓ Long term behavior change
 - ✓ Preventing real or potential harm **or**
 - ✓ Punishment.

Note: When mitigating harm through a Cease and Desist Order, the county agricultural commissioner (CAC) must be prepared to choose and implement their enforcement responses very quickly.

**Isn’t fraud
really bad?**

Yes. Really bad. However, the FAC doesn’t distinguish fraud from any other violation with respect to the actions that can, or should, be taken to change or punish the violator’s behavior or quickly mitigate harm to people, the environment, or property.

As with any other violation, the CAC must evaluate the circumstances and consequences of the fraudulent action before determining the most appropriate enforcement response.

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Choose an enforcement response that allows you to control the outcome

The Department of Pesticide Regulation (DPR) suggests that CACs use, whenever possible, the regulatory enforcement tools in the FAC that allow them full control over implementation and outcome.

Depending on the specific circumstances of the violation and the violator's history, the CAC may be able to effect behavior change through a program of progressive discipline where the CAC's response increases in severity over time. If the violation or violator poses a significant threat to people, the environment, or property, the CAC is authorized to stop or prohibit the action without first consulting DPR and can determine when it is appropriate for the action to resume.

If the violation is so egregious that the CAC feels they cannot adequately protect health, environment, or property using the regulatory tools they control, then the CAC should refer the issue to an external enforcement agency. Once this occurs, the CACs gives up a certain amount of control over the outcome.

Desired outcome	Enforcement Tools Under CAC Control
Behavior change	<ul style="list-style-type: none">• Frequent follow-up inspections• In-person compliance interviews¹• Levying an administrative civil penalty at the lowest fine level possible, or• Suspending the violator's permit or county registration until the violator comes into compliance with the law or a lawful order of the CAC.
Mitigate or prevent harm	<ul style="list-style-type: none">• Issuing a Cease and Desist Order• Issuing a Prohibit Harvest Order, or• Refusing, suspending, or revoking a permit or county registration until the violator comes into compliance with the law or a lawful order of the CAC.
Punishment	<ul style="list-style-type: none">• Refer case to external agency

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¹ The information presented here does not supersede the Enforcement Guidelines. CACs should consult and follow these guidelines when evaluating their enforcement options.

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Second choice - refer the case to DPR for more severe action

Under certain circumstances, the CAC should consider referring the case to DPR when the available county-level enforcement responses are not effective in changing violator behaviors, mitigating or preventing harm, in cases of high priority incidents, or when dealing with violations committed in multiple jurisdictions.

The FAC allows the Director to engage in civil prosecutions, levy civil penalties, and take licensing actions against licensees. The Director may also refer the case to the Attorney General.

Although the CAC does not have total control of cases referred to DPR, there is the opportunity for a moderate to high degree of cooperation in case development and the action taken. CACs are encouraged to discuss their concerns regarding the effectiveness of a county level action and the opportunities for case referral with DPR's Enforcement Branch at the earliest possible opportunity.

Third choice - actions controlled by external enforcement agencies or the courts

DPR and the CACs, when faced with egregious and/or criminal acts, can refer cases to enforcement agencies that are better equipped with respect to legal and penalty authority and personnel training and experience.

When referring a case to the Attorney General, district attorney, city prosecutor, or city attorney, both DPR and the CACs give up control of the investigation, prosecution, and penalty. When considering a referral, CACs should discuss the case and their concerns with DPR or their County Counsel to be certain that there are no other "in-house" options that could achieve the desired result (i.e., perhaps the County Counsel has experience in revoking a city business license and this is his or her preferred method of dealing with recalcitrant businesses).

Best fine classification

If the CAC chooses to levy a civil penalty for a violation of FAC section 11791 or FAC section 11792, then the CAC may apply the fine guidelines in 3CCR section 6130 to the circumstances of the violation, including consideration of the actual or possible consequences.

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References

- 3CCR section 6130, Civil Penalty Actions by Commissioners
 - 3CCR section 6140, Inspection Authority
 - 3CCR section 6141, Employee Interviews
 - 16CCR section 1922, Civil Penalty Actions by Commissioners
 - B&P Code section 8617
 - Enforcement and Compliance Options Chart, a.k.a., form PR-ENF-072
 - FAC sections 2281, 11452, 11453, 11456, 11501.5, 11737, 11791, 11792, 11893, 11896, 11897, 11981, 12582, 12601, 12642, 12643, 12648, 12672, 12673, 12961, 12977, 12982, 12996, 12998, 12999.5, 13000, 13101, 13102, 14004, and 15202
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